

REMARKS

Applicants have fully considered the Non-Final Office Action of February 24, 2004. Claims 6 and 11 have been amended. Claims 1-11 remain pending in the application. Reconsideration of the application is respectfully requested in view of the above amendments and the following remarks.

The Office Action

In the Office Action, the Examiner set forth the following objections and rejections:

1. The declaration was found defective because non-initialed alterations had been made to the mailing address of inventor Parpala-Sparman and to the spelling of the name of inventor Pirkko Kortteinen.
2. Claims 1-6 were rejected under the doctrine of obviousness-type double patenting as unpatentable over claims 1-3 of U.S. Patent No. 5,871,464.
3. Claims 1-11 were rejected under the doctrine of obviousness-type double patenting as unpatentable over claims 1-2, 6-9, and 13 of U.S. Patent No. 5,871,464.
4. Claims 6 and 11 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to distinctly claim the subject matter of the claimed invention.

These objections/rejections are addressed below by Applicants.

I. The Declaration, as amended by the inventors, is correct.

After review, Applicant's undersigned representatives noted that the Declaration as amended by the inventors is correct. In view of this verification, Applicants request that the procedural objection be withdrawn.

II. The conflicting inventions and the instant invention are commonly owned.

The application was rejected under the nonstatutory doctrine of obviousness-type double patenting over two U.S. Patents Nos. 5,871,464 and 6,342,214. These two patents and the instant application are currently commonly owned by Biostratum, Inc, and the assignments have been recorded by the PTO. A terminal disclaimer has been filed in compliance with 37 CFR 1.321(c) reflecting this common ownership. A copy of the disclaimer has been attached as Exhibit B. Applicants respectfully request that the rejections of claims 1-11 be withdrawn in light of the disclaimer.

III. Claims 6 and 11 distinctly claim their subject matter as required by 35 U.S.C. § 112.

Claims 6 and 11 were rejected as failing to distinctly claim the subject matter of the claimed invention. In particular, the Examiner stated that it was unclear whether the phrase "providing a viral vector gene therapy pharmaceutical" referred to the same vector recited in claims 1 and 7 or a different vector. They have been amended to clarify that they refer to the same vector recited in claims 1 and 7. In light of the amendments, Applicants request that the rejections of claim 6 and 11 be withdrawn.

CONCLUSION

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 1-11) are now in condition for allowance.

It is believed that no fee is due in conjunction with this response. If, however, it is determined that fees are due, authorization is hereby given for deduction of those fees, other than the issue fees, from Deposit Account No. 06-0308.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & MCKEE, LLP



June 21, 2004

Date

Richard M. Klein, Reg. No. 33,000
Richard J. Minnich, Reg. No. 24,175
1100 Superior Avenue
7th Floor
Cleveland, Ohio 44114-2579
(216) 861-5582

Certificate of Mailing

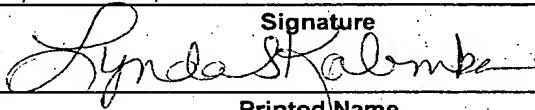
Under 37 C.F.R. § 1.8, I certify that this Amendment is being

deposited with the United States Postal Service as First Class mail, addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

transmitted via facsimile in accordance with 37 C.F.R. § 1.8 on the date indicated below.

deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated below and is addressed to: MAIL STOP AMENDMENT, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date
June 21, 2004

Signature	
	
Printed Name	
Lynda S. Kalembe	